IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Family Court Appeal No.34 of 2007

Aniruddha M. Railkar & anr. .. .. Appellants

Versus

Indian Council For Social Welfare & anr. .. Respondents

Mr.Pankaj Das i/by Mr.R.S. Datar for Appellants.

Mr.Vinod Joshi for Respondent No.2.

Mr.Hariharan, Representative of CARA, present.

CORAM : J.N. PATEL &

SMT.ROSHAN DALVI, JJ.

Dated :4th April, 2007

ORAL JUDGMENT : (Per Smt.Roshan Dalvi, J.)

1. This Appeal challenges the order dated 20th February 2007 of the Family Court, Pune, rejecting the Appellants' Petition for adoption of an Indian child Shubham. The Appellants are foreign nationals of Indian origin residing in the U.S.A. They desired to adopt an Indian child. They initially applied to the Agency in the U.S.A. called

"Adoptions from the Heart". Their Home Study Report was done. They were approved for adoption. Since they desired to adopt an Indian child, they obtained information from the website of the Central Adoption Resource Agency (CARA), which is an autonomous body under the Ministry of Social Justice & Empowerment, Government of India. They came to learn, inter alia, of an NGO called Preet Mandir. They were given a match for male child that they desired. They contacted the said child Shubham in April 2005.

2. CARA gave the clearance for the adoption on 4.7.2005 as it was not possible to have Indian adoption for the said child Shubham. The Appellants executed the Acceptance Deed and accepted the child on 28.4.2006. Since the period of more than one year had elapsed from the time they made the initial application, they were required to get re-approval of CARA, which they obtained. The Appellants and their family members came to India and met Shubham. CARA granted its No Objection Certificate

(NOC) on 13.7.2006.

3. In the meantime, the recognition granted to the NGO – Preet Mandir came to be suspended on 7.7.2006. Despite such suspension, CARA had granted its NOC on 13.7.2006.

4. The Appellants filed their Petition for being appointed guardian of the said child Shubham under Section 7 of the Guardians and Wards Act, 1890 on 18.8.2006. The said provision confers power upon the Court to appoint a guardian of the child upon its satisfaction that it is in the welfare of the child. The Family Court, Pune failed to decide the Petition for a considerably long time. The Appellants, therefore, filed Writ Petition No.312 of 2007 and obtained directions for expedition of their Petition.

5. The Family Court, Pune, heard and rejected the

Appellants' Petition on the ground that the recognition to Preet Mandir for granting inter-country adoption was suspended.

6. The Appellants have challenged the said order in this Court.

7. Two distinct aspects are required to be noted and set right in this Petition.

(i) CARA is the Government Agency for inter-country adoptions. The officers of CARA make their report in the case of all applications for such adoptions. They see the financial status of the parties, the bonafides of their offer of adoption and make a Home Study Report. Once that is done, the child, who has been found as a fit match for the Appellants, who desire to adopt him or her, are brought together. It is, therefore, of considerable importance that the Petitions for granting leave and permission to adopt, be disposed of most expeditiously. These Petitions deal with lives of innocent, fragile, infant children. They are

either destitute or abandoned by their parents. They are kept with several accredited and recognized NGOs. We are told that there are 14 such NGOs which are recognized by the Government in the city of Mumbai itself. The children are required to be adopted and taken by the adoptive parents expeditiously after preliminary requirements are completed. The welfare of such children, which is the only consideration for the appointment of a guardian under Section 7 of the Guardians and Wards Act, 1890 demands expedition of their applications for giving them homes with their adoptive parents as soon as possible. Any delay on the part of any Authority, including Judicial Officers, results in delayed bonding with their adoptive families and consequently their overall welfare is prejudicially affected. It is, in these circumstances, that the Writ Petition came to be disposed off with an order of expedition. We trust that in future all such Petitions are disposed off expeditiously, without the requirement of filing similar Writ Petitions. The recognized NGOs work

for the temporary care and custody of the abandoned and

destitute children. There is a continuous flow of such children in their Institutions. Consequently, there should be a continuous outflow of the children into the homes of the adoptive parents. The government agency in the country for granting its approval is CARA. The Courts are, therefore, required only to oversee and supervise the work already done by the recognized NGOs as well as CARA and to see that the welfare of the child is heeded. All that has to be seen is that parties do not traffic in children and that the children are not taken for the purposes of any bondage, slavery, commercial or sexual exploitation or prostitution. Consequently, the Court is required to see that the adoptive parents are reasonably settled in life, to be able to take care of the children they desire to adopt and the Home Study Report shows a congenial atmosphere in which children would be nurtured and brought up. Therefore, the judicial work is required only within such specific narrow confines. Once, therefore, a Petition for adoption is brought before any Court, it is the bounden duty of the Court to take it up on the date of

hearing itself and to give the adoptive child a home unless the parents are found unfit for the role of being adoptive parents.

(ii) Any adverse report or finding against a recognized and accredited agency or NGO requires steps, both preventive and punitive, to be taken against its errant officers or staff members. This does not call for a rejection of adoption of any innocent, infant child who is not responsible for any illegal act of the agency. In fact, such a circumstance may call for steps to be taken by the Government or the Court for removal of the other children, yet unadopted, in the care and custody of such an agency, to other similar recognized agencies or NGOs so that their adoptive process can be smoothly culminated. (The children from such NGOs would be required to be taken in adoption with the greatest expedition before any misconduct of the officers of NGOs could adversely affect the childrens' interests.)

8. Consequently, in the instant case, though the recognition

of Preet Mandir was suspended on 7.7.2006, it is seen that CARA gave its NOC for adoption of the minor child Shubham on 13.7.2006. The only consideration before the Court was the welfare of the child due to be adopted and not any other extraneous consideration, for which the NGO may have come into disrepute.

9. The consideration by the Family Court, Pune about the suspension of the licence is, therefore, misconceived. The issue framed by the learned Family Court Judge, Pune, in that regard is equally misconceived.

10. Paragraph 7 of the impugned order shows that the Appellants have a very good cultural and financial background. The home study by the Adoption Agency in the U.S.A., "Adoptions from the Heart", which is a recognized institution in that country, made a report in favour of the Appellants. Though the Court has observed that in normal circumstances the Petition for adoption made by the Appellants would have been allowed, the

Court incorrectly went into certain misconduct of the officers of the NGO - Preet Mandir and negatived the Appellants' contention for adoption. The impugned order, therefore, cannot be sustained.

11. Consequently, the impugned order dated 20.2.2007 passed by the Family Court No.1, Pune, dismissing the Petition of the Appellants is set aside. The Appellants are declared guardians of the minor child Shubham under the provisions of Section 7 of the Guardians and Wards Act, 1890. The Appellants are allowed to take the custody of the child Shubham and to start the process of his legal adoption in the country of their nationality as per the rules and laws of that country. The NGO - Preet Mandir shall allow the Appellants to take custody of the child Shubham forthwith.

12. However, we direct the Government Agency for Adoptions in India, CARA, to take steps to remove the NGO Preet Mandir as recognized NGO after following due legal process by giving its officers a hearing, if it concludes that

its officers committed any illegal acts with regard to any adoption process.

13. Whilst parting with this judgment, we may repeat that the Court taking adoption Petitions shall only consider the financial and cultural background of the adoptive parents and the NOC of CARA when disposing off adoption Petitions. All such Petitions shall be disposed off most expeditiously.

14. The Appeal is disposed off accordingly. There shall be no order as to costs.

(J.N. PATEL, J.)

(SMT.ROSHAN DALVI, J.)